Decision for dispute CAC-UDRP-102008

Case number	CAC-UDRP-102008
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Domain names	arcelornmittal.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	ArcelorMittal S.A.

Complainant representative

Organization	Nameshield (Daria Baskova)

Respondent

Name	lee wang

OTHER LEGAL PROCEEDINGS

There are no other proceedings the Panel is aware of.

IDENTIFICATION OF RIGHTS

The Complainant relies on its rights as the owner and registered proprietor of the international trademark n°947686 ArcelorMittal registered on 3 August 2007 registered in over 32 countries and in classes 06,07,09,12,19,21,39,40,41,42.

It also relies on its extensive use in trade internationally which makes it a well known mark. The Complainant also owns a large domain name portfolio, including <arcelormittal.com> registered on 27 January 2006.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

ARCELORMITTAL S.A. (the Complainant) is a company specialized in steel production and one of the largest steel producers in the world and the market leader for steel used in automotive, construction, household appliances and packaging with operations in more than 60 countries. It has sizeable holdings of raw materials and operates extensive distribution networks.

The disputed domain name was registered on 15 May 2018 and resolves to a parking page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name is confusingly similar to its trademark. The trademark ArcelorMittal® is misspelled in the disputed domain name. The Complainant claims that the addition of the letter “N” in the mark is not sufficient to avoid the likelihood of confusion with the Complainant’s trademark. This is a clear case of typosquatting, the disputed domain name contains an obvious misspelling of the Complainant’s trademark. Please see the decisions of the previous panels:

- FORUM Case No. 1765498, Spotify AB v. The LINE The Line / The Line (“The Panel finds that the disputed domain name, <spotfy.com>, is confusingly similar to Complainant’s valid and subsisting trademark SPOTIFY. […] Respondent arrives at the disputed domain name by merely deleting and “i” from the mark and using it in its entirety and adding the g TLD “.com.” This is inadequate to distinguish the disputed domain name from the Complainant’s trademark. […] the Panel finds that the disputed domain name is confusingly similar to Complainant’s trademark.”);

- FORUM Case No. 1778017, Walgreen Co. v. Amar Pachauri (“The Panel agrees that misspellings such as omission of a letter or letters does not distinguish the Domain Names from the Complainant's WALGREENS trade mark pursuant to the Policy.”).

Furthermore, the Complainant contends the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the international trademark ArcelorMittal® of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names.

Moreover, previous panels have confirmed that the slight spelling variations of the trademark ArcelorMittal® do not prevent a disputed domain name from being confusing similar to the Complainant’s trademark. Please see the prior UDRP cases:

- WIPO Case No. D2016-1853, Arcelormittal S.A. v. Cees Willemsen (“The disputed domain names incorporate the Complainant’s well-established ARCELORMITTAL Mark by only changing the element “Arcelor” to “Arclor” and “Arelor”, respectively. This is a clear case of typosquatting and the disputed domain names are nearly identical and are confusingly similar to the ARCELORMITTAL Mark.”);

- CAC Case No. 101265, Arcelormittal v. Fetty wap LLc Inc (“The panel does not regard the omission of the letter T and the addition of the letter S to sufficiently alter the nature of the Domain Name such that it might avoid a finding of the Domain Name being confusingly similar to the Complainant's ARCELORMITTAL trade mark.”);

- CAC Case No. 101267, Arcelormittal v. davd anamo (“The disputed domain name is confusingly similar to the Complainant's trademark as the domain name was created by changing one letter in the middle to a similar-looking letter.”).

Therefore, the Complainant contends that the domain name <arcelornmittal.com> is confusingly similar to its trademark ArcelorMittal®.

The Respondent does not have any rights or legitimate interest in the disputed domain name. According to the WIPO case D2003-0455 Croatia Airlines d .d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP. The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not known by the disputed domain name, but as “WhoisGuard, Inc.”, and has not acquired trademarks rights or a license on ArcelorMittal®. Indeed, the past panels have held

that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. See FORUM Case No. FA 96356, Broadcom Corp. v. Intellifone Corp. (“no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use”). Moreover, the Complainant asserts that Respondent uses the disputed domain name to pass itself off as the Complainant’s employees and to conduct a phishing scheme in order to request a transfer or payment to bank accounts. Using the domain name in this manner is neither a bona fide offering of goods or services under Policy 4 (c)(i), nor a non-commercial or fair use pursuant to Policy 4(c)(iii).

Please see:

- FORUM Case No. 1775963, United Rentals, Inc. v. saskia gaaede / Mr (“Complainant submits that Respondent is intending to impersonate Complainant to contact customers of Complainant, posing as a credit supervisor of Complainant, directing customers to transmit payments to a bank account not controlled by Complainant. See Compl. Append. M. Therefore, the Panel agrees with Complainant and finds that Respondent has does not have rights or legitimate interests in the domain name per Policy 4(c)(i) or (iii)”).

Furthermore, the Complainant says the disputed domain name is a typosquatted version of the ArcelorMittal®. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can be evidence a respondent lacks rights and legitimate interests in the domain name.

Please see:

- FORUM Case No. 1765498, Spotify AB v. The LINE The Line / The Line (“Complainant contends the <spotfy.com> domain name differs from the SPOTIFY mark only by the omission of the letter “i" in the mark, and is thus a classic case of typosquatting. […] The Panel finds that Respondent’s registration of the domain name is typosquatting and indicates it lacks rights and legitimate interests in the domain name per Policy 4(a)(ii).”).

- FORUM Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy 4(a)(ii).”).

Based on the above mentioned arguments, the Complainant argues that Respondent has no rights or legitimate interests in the disputed domain name. He has no relationship with Complainant's business and is not authorized or licensed to use the trademark ArcelorMittal®.

The disputed domain name has been registered and is being used in bad faith.

The Complainant’s trademark ArcelorMittal® is widely known. Past panels have confirmed the notoriety of the trademarks ArcelorMittal® in the following cases:

- CAC Case No. 101908, ARCELORMITTAL v. China Capital ("The Complainant has established that it has rights in the trademark "ArcelorMittal", at least since 2007. The Complainant's trademark was registered prior to the registration of the disputed domain name (February 7, 2018) and is widely well-known.");

- CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd ("The Panel is convinced that the Trademark is highly distinctive and well-established.").

Given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

Please see for instance WIPO - D2004-0673 - Ferrari S.p.A v. American Entertainment Group Inc.

Moreover, the Complainant contends that the Respondent was aware of the Complainant's ArcelorMittal® trademark due to the Respondent's phishing activity and impersonation of the Complainant's employees in the e-mail exchange with the client.

Please see:

- CAC Case No. 101771, BOLLORE v. james white ("Given Respondent's email phishing activity impersonating Complainant and directed at a Complainant's own travel department, It is clear that Respondent was fully aware of Complainant when it registered the disputed domain name.").

Furthermore, the Complainant states that the Respondent used the disputed domain name in bad faith. It is well-established that using a domain name for purposes of phishing or other fraudulent activity constitutes solid evidence of bad faith use with intent for commercial gain under paragraph 4(b)(iv) of the Policy.

Please see:

- WIPO Case No. D2014-1471, Accor v. SANGHO HEO / Contact Privacy Inc. ("The un-opposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith");

- FORUM Case No. 1393436, Qatalyst Partners LP and Qatalyst Partners LLP v. Alyna Devimore / N/A ("the Panel holds that Respondent's registration and use of the <qatalystpartnerslp.com> domain name as part of the phishing scheme described above is sufficient evidence of bad faith registration and use pursuant to Policy 4(a)(iii)").

Finally, the Complainant claims that the Respondent's <arcelomital.com> domain name is a typosquatted version of the ArcelorMittal® trademark and indicates bad faith. See:

- FORUM Case No. 477183, Nextel Communications Inc. v. Jason Geer ("Panel agrees with Complainant that Respondent registered and used the disputed domain name in bad faith. First, Respondent's <nextell.com> domain name epitomizes "typosquatting" in its purest form, because Respondent misspelled Complainant's well known mark by merely adding the letter "l," causing Internet users seeking Complainant's NEXTEL mark to become confused.").

Thus, Complainant contends that Respondent has registered the disputed domain name and is using it in bad faith.

- WIPO Case No. D2016-1853, Arcelormittal S.A. v. Cees Willemsen ("The disputed domain names incorporate the Complainant's well-established ARCELORMITTAL Mark by only changing the element "Arcelor" to "Arclor" and "Arelor", respectively. This is a clear case of typosquatting and the disputed domain names are nearly identical and are confusingly similar to the ARCELORMITTAL Mark.");

- NAF Case No. 1775963, United Rentals, Inc. v. saskia gaaede / Mr ("Complainant submits that Respondent is intending to impersonate Complainant to contact customers of Complainant, posing as a credit supervisor of Complainant, directing customers to transmit payments to a bank account not controlled by Complainant. See Compl. Append. M. Therefore, the Panel agrees with Complainant and finds that Respondent has does not have rights or legitimate interests in the domain name per Policy 4(c)(i) or (iii)").

- CAC Case No. 101771, BOLLORE v. james white ("Given Respondent's email phishing activity impersonating Complainant and directed at a Complainant's own travel department, It is clear that Respondent was fully aware of Complainant when it registered the disputed domain name.").

- WIPO Case No. D2014-1471, Accor v. SANGHO HEO / Contact Privacy Inc. ("The un-opposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith").

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision. The rules as to service were complied with and the panel is satisfied that service was duly effected.

PRINCIPAL REASONS FOR THE DECISION

Here only one character of the disputed domain name is different from the Complainant's well-known registered mark – the N. The Respondent has not come forward with any explanation and has on the face of it, no rights or interests in the name. This is a case of blatant and overt typosquatting. No use can be bona fide where a domain name was selected to create and capitalize on confusion and trade on the reputation of the trade mark owner or to impersonate the owner. Typosquatting is a form of impersonation. This is not consistent with honest or fair or legitimate use. Bettinger, Domain Name Law and Practice, Second Ed. p.1383, para. IIIE.302. See also WIPO case No. D2009-1091 (dyson24-7.com).

It is a case of paradigm bad faith registration and use to divert traffic to the disputed domain name and possibly worse (the evidence of phishing is not sufficient for a final decision on that point). See CAC case No. 100549 (<remeymartin.com>), WIPO case No. D2011-0003 (<allsatate.com>) and CAC case No. 100666 (<cetaphyl.com>). Typosquatting also indicates that the Respondent was aware of the Complainant at the time of registration, see WIPO case No. 2010 -1414 (<wwvaletwaste.com>) and Typosquatting is a known category of disruption. See Bettinger, Domain Name Law and Practice, Second Ed. p.1426, para. IIIE. 401. Bad Faith is deemed to be proven.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ARCELORNMITTAL.COM**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2018-06-26

Publish the Decision